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MUNICIPAL CORPORATIONS — ACTION AGAINST TOWN — AUTHORITY OF COMMITTEE TO EMPLOY ATTORNEY. — By vote at a town meeting a committee was authorized to build a bridge. Litigation arose concerning the bridge and the committee employed counsel in connection therewith. In a suit by counsel against the town to recover for his professional services, *held* that the town is not liable, the committee having acted beyond its authority in employing counsel. *Stewart* v. *Inhabitants of York*, 104 Atl. 701 (Me.).

In the absence of express or implied restrictions a town has the authority to employ an attorney to attend to its corporate interests. *Cheesebrew* v. *Town of Mt. Pleasant*, 71 W. Va. 199, 79 S. E. 350; *City of Holdenville* v. *Lawson*, 40 Okla. 38, 135 Pac. 405. See TIEDEMAN, MUNICIPAL CORPORATIONS, 316, § 176. But there is no authority to employ an attorney in regard to matters not affecting the interests of the town. *Peck* v. *Spencer*, 26 Fla. 23, 7 So. 642; *Tharp* v. *Blake*, 171 S. W. 549 (Tex. Civ. App.). See 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., 1246, § 824. In the principal case, as the court points out, the authority given the committee to build a bridge carried with it the incidental authority to select an engineer, obtain plans and specifications, advertise for bids, and award and execute the contract. See *Blaisdell* v. *York*, 110 Me. 500, 518, 87 Atl. 361, 370. It would seem that the committee also had power to employ counsel in regard to the litigation in question, for that litigation affected the interests of the town in that it was purely an expense of building the bridge. *Waterbury* v. *Laredo*, 60 Tex. 519, reversed on other grounds in 68 Tex. 565, 5 S. W. 81. In deciding otherwise, the court was apparently influenced by two Massachusetts decisions. See *Butler* v. *Charlestown*, 7 Gray (Mass.) 12; *Fletcher* v. *Lowell*, 15 Gray (Mass.) 103. But the latter case decided that authority in the mayor to employ counsel in defending an action for damages against the city did not include the employment of counsel for the extraordinary purpose of putting through the legislature an act diminishing the claim for damages. In the former case there was no official action at all, the legal services being rendered merely at the request of individual aldermen. Accordingly neither case is in point.

PLEDGES — MORTGAGE COLLATERAL — DUTY OF PLEDGEE TO FORECLOSE ON REQUEST OF PLEDGOR. — Defendant assigned overdue real estate mortgages and bonds to the plaintiff as collateral security for his note. Without tendering money to cover the expenses, the defendant requested the plaintiff to foreclose at a time when the property would have satisfied the debt. The plaintiff assented, but failed to do so. Subsequently the obligor on the bond went bankrupt and the property depreciated. In an action on the note the defendant counterclaimed for negligence in failing to foreclose. *Held*, that the plaintiff was not negligent. *City Bank of York* v. *Ricker*, 104 Atl. 804 (Pa.).

Inasmuch as both the pledgor and the pledgee of collateral security are interested in its application there is a duty of due care imposed on the latter in handling the security. See COLEBROOKE, COLLATERAL SECURITIES, 2 ed., §§ 87, 117. He may not sell the collateral to satisfy his debt, but must hold and collect it as it becomes due. *Joliet Iron & Steel Co.* v. *Scioto Fire Brick Co.*, 82 Ill. 548. Ordinary diligence is required of the pledgee in collecting on the collateral at maturity. *Farm Investment Co.* v. *Wyoming College*, 10 Wyo. 240, 68 Pac. 561; *Larkin Co.* v. *Dawson*, 37 Tex. Civ. App. 345, 83 S. W. 882. See *Coleman* v. *Lewis*, 183 Mass. 485, 487, 67 N. E. 603. The same is true where overdue collateral is pledged. *Wakeman* v. *Gowdy*, 10 Bosw. (N. Y.) 208. In the principal case the pledgee was requested to foreclose, which would involve litigation and risk. It may be argued that if the security is ample the foreclosure should not be left to the caprice of the pledgee. See 19 HARV. L. REV. 471. The pledgor, however, can protect his interest by taking up the security or having a third person do so. It is generally held, therefore, as in the principal

case, that the pledgee is under no duty to sue. *Black River Bank* v. *Page*, 44 N. Y. 453; *Rice* v. *Benedict*, 19 Mich. 132; *Smith* v. *Felton*, 85 Ind. 223. But see *Wakeman* v. *Gowdy*, *supra*. This is especially true where the pledgor makes no tender covering the expense of litigation. *Wells & Dewing* v. *Wells & Scriber*, 53 Vt. 1. See *Culver* v. *Wilkinson*, 145 U. S. 205, 213. Although the pledgee's assent and subsequent failure to foreclose might constitute such negligence as to render him liable, yet if the pledgor had notice of this inaction and an opportunity to protect himself, the pledgee would not be liable. See *City Savings Bank* v. *Hopson*, 53 Conn. 453, 457.

QUASI-CONTRACT — RECOVERY OF MONEY PAID UNDER MISTAKE OF FACT — PAYMENT BY MISTAKE ON A POST-DATED CHECK. — A bank paid the payee of a post-dated check, not noticing the future date. After payment, but before the date of the check, the drawer ordered payment stopped. The bank sought to recover the amount from the payee. *Held*, defendant's ignorance that the bank paid under a mistake is not a sufficient defense. *Second National Bank of Reading* v. *Zable*, 66 Pitts. L. J. 774.

Generally, one who pays another money under a mistake of fact may recover. *Hummel* v. *Flores*, 39 S. W. 309 (Texas); *United States* v. *Phillips*, 21 D. C. 309. The purpose of allowing such a quasi-contractual action is to prevent the unjust enrichment of the defendant. *Moses* v. *McFerlan*, 2 Burr. 1005, 1012. There is no recovery, therefore, in cases where the plaintiff, though under a duty to pay, paid under a mistake as to the nature of his obligation or legal liability. *Johnson* v. *Hernig*, 53 Pa. Super. Ct. 179; *Buel* v. *Boughton*, 2 Den. (N. Y.) 91; *Morrison* v. *Payton*, 31 Ky. L. Rep. 992, 104 S. W. 685. And recovery is not allowed when the defendant has with honesty so changed his position that if the plaintiff recovered, he could not be restored to his former status. *Bend* v. *Hoyt*, 13 Pet. (U. S.) 263; *Behring* v. *Somerville*, 63 N. J. L. 568, 44 Atl. 641. From the foregoing it would seem that in the principal case the bank should recover. The law, however, for commercial security treats banks more strictly, and in the absence of fraud, denies them recovery for money paid the holders of checks under mistake as to the sufficiency of the funds of the drawers or their solvency. *National Exchange Bank* v. *Ginn*, 114 Md. 181, 78 Atl. 1026; *American National Bank* v. *Miller*, 185 Fed. 338. The present case seems to relax the strict rules.

RAILROADS — STATE REGULATION — UNLAWFUL INTERFERENCE WITH INTERSTATE COMMERCE. — A Missouri statute prohibits railroad corporations from issuing mortgage bonds without authority from the Public Service Commission, imposes heavy penalties for violation of the statute and purports to invalidate bonds so issued. (1913, MO. LAWS, 592, 593, 600.) The commission is required to charge a fee proportionate to the value of the authorized issue. (*Ibid.*, 567.) The plaintiff company is a Utah corporation engaged in interstate transportation, a small part of its line extending into Missouri. The company applied to the Missouri Public Service Commission for a certificate authorizing it to issue $31,848,900 worth of bonds secured by a mortgage on its entire interstate line. The commission granted the authority, charging a fee of $10,962.25. The company accepted the grant under protest, alleging that the fee was an unconstitutional interference with interstate commerce. The Supreme Court of Missouri held that the company by accepting the benefits was estopped to assert the invalidity of the fee. (In a subsequent case the Missouri court held the statute inapplicable to foreign corporations. *Public Service Commission* v. *Union Pac. R. R. Co.*, 271 Mo. 258.) On appeal to the United States Supreme Court, *held*, the charge was an unlawful interference with interstate commerce, the company not being estopped to assert its illegality, since the payment was under duress. *Union*